IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

Crl.Rev.Pet.No. 3367 of 2007()

CRA.9/2005 of ADDL.SESSIONS COURT (ADHOC)-IV, TRIVANDRUM
CC.525/03 OF JFCM, VARKALA

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REVN. PETITIONER: APPELLANT/ACCUSED:

RASHEEDA, D/O. ASUMA BEEVI,
SHAHANA MANZIL, SREYAT, EDAVA,THIRUVANANTHAPURAM.

BY ADV. SRI.P.BANI

RESPONDENTS: RESPONDENT/COMPLAINANT:

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1. K. SARASWATHY AMMA,
VADAKKEVILA VEEDU, MANTHARA, EDAVA P.O.,
THIRUVANANTHAPURAM.

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 18/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3367 OF 2007

Dated this the 18th day of September, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.525/2003 on the file of the J.F.C.M., Varkala challenges the conviction entered and the sentence passed against her for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision

Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner contended that the statutory notice was not issued in the correct address of the revision petitioner accused who was actually residing in Shahana Manzil, Sreyat, Edava, Thiruvananthapuram whereas the notice was issued at Vilayil veedu @ Painkulam Vayalil veedu, Manthara, Edava. The address of the revision petitioner shown in the complaint is the same address to which the statutory notice was issued. In the appeal filed by the revision petitioner before the lower appellate court, the very same address was shown. It is only for the first time in this revision that she has deliberately changed her address. Hence the contention that notice was issued in wrong address cannot be countenanced at all. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the

petitioner.

5. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided she complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357(3) Cr.P.C. a sum of Rs.2,50,000/- (Rupees two lakhs and fifty thousand only) within six months from today, then she need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, she shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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